BEFORE THE LABOR COMMISSIONER OF THE STATE OF CALIFORNIA

DOROTHY STRANGE vs. DANKA CORPORATION	Plaintiff) Case No. 10-45393) ORDER, DECISION, OR AWARD) OF THE LABOR COMMISSIONER
	Defendant)))

BACKGROUND

The plaintiff filed an initial claim with the Labor Commissioner's office on February 26, 2002. The complaint raises the following allegations:

- 1. That the Plaintiff is due \$27,676.32 in commissions.
- 2. That the Plaintiff is due waiting time penalties pursuant to Labor Code § 203.

A hearing was conducted in San Diego, California on October 15, 2002, before the undersigned hearing officer designated by the Labor Commissioner to hear this matter. The Plaintiff appeared in pro per. The Defendant was represented by Jacqueline M. Gayle-Kelly, Director of Corporate Human Resources and Diversity.

Due consideration having been given to the testimony, documentary evidence, and arguments presented, the Labor Commissioner hereby adopts the following Order, Decision or Award.

FINDINGS OF FACT

The Defendant is engaged in the resale, installation and servicing of copiers and office equipment. The Plaintiff has been employed by the Defendant as a sales representative, responsible for government sales, since June 8, 2001.

Effective October 1, 2001, the Defendant implemented a written compensation plan for its sales staff with various incentives designed to increase gross profits through

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profitable service and hardware sales. Under the terms of this plan, sales representatives would earn one hundred percent (100%) of the gross profit generated by sales through the company's equipment manufacturers. The complete plan entitled Sales Compensation Policies and Operating Procedures was presented to the sales representatives on October 5, 2001. On October 25, 2001, the Plaintiff signed an acknowledgment of receipt of the compensation plan.

On October 12, 2001, the Plaintiff obtained a purchase order from the United States Navy for \$169,922.28 in sales and services. Under the compensation plan of October 1, 2001, the Plaintiff would have been entitled to a commission of \$55,352.64. The equipment sold by the Plaintiff was installed at the Naval Aviation Depot on November 12, 2001.

On October 26, 2001, after the sale to the Navy but prior to the installation, the Defendant modified the compensation plan by reducing commissions on sales to fifty percent (50%) of the gross profit. Based on this modification, the Plaintiff was paid a commission of \$27,676.32 for the sale.

Under both plans, the "sales incentive earnings event" is specified to occur on the installation date.

The Plaintiff agrees that commissions on sales made after November 1, 2001 could be paid at fifty percent (50%) of the gross profit but argues that she should have been paid for the Naval Aviation sale under the terms of the compensation agreement in effect at the time of the sale.

It is the Defendant's position that commissions on sales are not earned or "vested" until installation. Therefore, the applicable commission rate would be dictated by the compensation plan in effect at the time of the installation.

LEGAL ANALYSIS

The facts in this case are essentially uncontested. First, a compensation plan was put into effect by the Defendant with a specified commission rate. Second, a sale was made by the Plaintiff. Third, the Defendant modified the compensation plan by lowering the commission rate and paid the Plaintiff's commission based on the lower rate. Fourth, the sale was consummated by the installation of the customer's equipment. The dispute is over when the commission was earned, at the time of the sale or at the time of the installation.

Basic principals of contract law and public policy must be applied in the resolution of the dispute. The Defendant and the Plaintiff entered into an express contract. An offer was made to pay the Plaintiff one hundred percent (100%) of the gross profit generated by her sales and her substantial performance constituted acceptance. Once the Plaintiff performed in reliance upon the Defendant's promise, the offer could not be revoked.

Under the contract between the parties, "the sales incentive earnings event" was established as the date of installation of equipment. This triggering event established the date that the sale was consummated and the commission was due, not the rate of compensation.

While there is no doubt that the Defendant had the right to unilaterally modify the compensation plan, such modifications could only be applied prospectively to sales made on or after November 1, 2001. If the Defendant were allowed to unilaterally modify the commission rate on sales commenced under an existing contract, promises could be illusory and subject to one-sided manipulation.

The Defendant expressed concerns about the recision of sales and the need to avoid charging back commissions to the sales persons. Obviously, if an installation does not occur, the sale would not be consummated and no commission would be due.

Under these circumstances, the Plaintiff is entitled to receive the \$27,676.32 balance of her earned commission on the Naval Aviation Depot sale, as claimed.

Labor Code § 203 provides for a penalty if an employer willfully fails to pay wages to a terminated employee in accordance with Labor Code §§ 201 and 202. Inasmuch as the Plaintiff remains employed by the Defendant, waiting time penalties are not applicable.

CONCLUSION

For all of the reasons set forth above, IT IS HEREBY ORDERED that:

- 1. The Plaintiff is entitled to receive \$27,676.32 in commissions.
- 2. Interest in the amount of \$2,615.29 has accrued on the wages due, pursuant to Labor Code \S 98.1.

Dated: October 23, 2002

Daniel M. Cornet, Hearing Officer